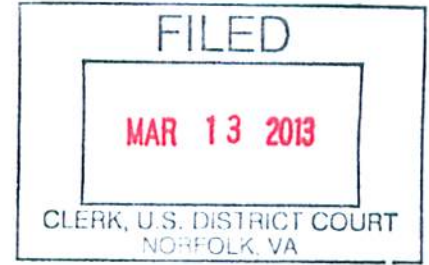


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division



ERIK HERRIEN,

Plaintiff,

v.

Civil Action No.: 2:11cv560

MICHAEL J. ASTRUE
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

OPINION AND ORDER

Plaintiff brought this action under 42 U.S.C. § 405(g) and 42 U.S.C. § 1383(c)(3) seeking judicial review of the final decision of the Commissioner of Social Security ("Commissioner") denying his claim for Supplemental Security Income under the Social Security Act. Pursuant to the provisions of 28 U.S.C. §§ 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia, and by order of reference dated December 20, 2011, this matter was referred to a United States Magistrate Judge for a Report and Recommendation. Doc. 7.

The Report and Recommendation of the Magistrate Judge ("R&R"), filed on February 21, 2013, finds that the Administrative Law Judge's ("ALJ") determination that Plaintiff is not disabled is not based upon substantial evidence. Doc. 18. Accordingly, the Magistrate Judge recommends the following: 1) that the final decision of the Commissioner be vacated and remanded for further proceedings consistent with the R&R; 2) that Defendant's Motion for Summary Judgment be denied; and 4) that Plaintiff's Motion for Summary Judgment be granted to the extent that it seeks reversal and remand of the Commissioner's decision, and denied to the extent that it seeks entry of an order directing the award of benefits. *Id.* at 21-22.

By copy of the R&R, each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge within fourteen (14) days from the date the R&R was mailed, pursuant to Rule 6(a) of the Federal Rules of Civil Procedure. The parties were also given an additional three (3) days, pursuant to Rule 6(d) of the Federal Rules of Civil Procedure. The time for filing written objections has now passed, and neither party has filed objections. As indicated in the R&R, “failure to file timely objections to the findings and recommendations set forth [in the R&R] will result in a waiver of the right to appeal from a judgment of this Court based on such findings and recommendations.” Id. at 22.

This Court has reviewed the R&R of the Magistrate Judge and hereby adopts and approves in full the findings and recommendations set forth therein. Accordingly, it is hereby **ORDERED** that the final decision of the Commissioner be **VACATED** and **REMANDED** for further proceedings consistent with the R&R, that Plaintiff’s Motion for Summary Judgment be **GRANTED** to the extent that it seeks reversal and remand of the Commissioner’s decision, and **DENIED** to the extent that it seeks entry of an order directing the award of benefits, and that Defendant’s Motion for Summary Judgment be **DENIED**.

Plaintiff is advised that he may appeal from this Opinion and Final Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Said written notice must be received by the Clerk within sixty (60) days from the date of this Order. If Plaintiff wishes to proceed in forma pauperis on appeal, the application to proceed in forma pauperis is to be submitted to the Clerk, United States Court of Appeals, Fourth Circuit, 1100 E. Main Street, Richmond, Virginia 23219.

The Clerk is **REQUESTED** to send a copy of this Opinion and Order to all counsel of record.

It is so **ORDERED**.

/s/
Henry Coke Morgan, Jr.
Senior United States District Judge
HCM
HENRY COKE MORGAN, JR.
SENIOR UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
March 13th, 2013